

ineligible for a Surface Transporters refund. In MST's 1994 Subpart V crude oil refund, the applicant claimed that it, not its owner/operators, purchased 2,298,915 gallons of refined petroleum products. In its decision, the DOE determined that because MST had now proved that it bought more than 250,000 gallons, it had been eligible for a Surface Transporters refund. Thus, the applicant's Stripper Well waiver was effective, and the DOE denied MST's Subpart V refund application. Further, the DOE could not reopen the Surface Transporters proceeding, as the proceeding closed years ago, and the applicant failed to present any adequate reason for failing to submit a timely Motion for Reconsideration in that earlier proceeding.

#### Dismissals

The following submissions were dismissed:

Name	Case No.
BROOKS SCANLON, INC.	RF272-97995
CITY OF RICHARDSON .....	RF272-95234
ROCKY FLATS FIELD OFFICE.	VSO-0105
SOUTHLAND POWER CONSTRUCTORS.	RF272-77584
TRAP ROCK INDUSTRIES, INC.	RF272-95254

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#### Issuance of Decisions and Orders; Week of September 4 Through September 8, 1995

During the week of September 4 through September 8, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of

Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: October 7, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 936

#### Appeals

*James Minter, 9/6/95, VFA-0064*

James Minter filed an Appeal from a determination issued by the Albuquerque Operations Office (DOE/AL) in response to a request filed under the Freedom of Information Act. The Appellant sought documents relating to an alleged assault and battery between himself and another DOE employee. In its Decision, the Office of Hearings and Appeals (OHA) rejected the Appellant's attempt to expand the scope of the appeal. The OHA concluded that there may be responsive documents that were not identified in the initial search. Accordingly, the DOE granted the Appeal and remanded the matter to DOE/AL for further action.

*Klickitat Energy Partners, 9/8/95, VFA-0065*

Klickitat Energy Partners filed an Appeal from a partial denial by the Bonneville Power Administration of a Freedom of Information Act Request. The DOE found that BPA failed to provide adequate descriptions of the documents that were withheld under Exemption 5, and that the justification for withholding documents was inadequate. The matter was remanded to BPA for a new determination. The DOE also found that BPA's search for responsive documents was adequate.

#### Personnel Security Hearing

*Oak Ridge Operations Office, 9/8/95, VSO-0029*

A Hearing Officer recommended that access authorization not be restored to an employee whose access was suspended due to evidence of alcohol dependence. The Hearing Officer found the employee had not shown sufficient evidence of rehabilitation to mitigate valid security concerns raised by his excessive use of alcohol.

#### Refund Applications

*State of Montana, Et Al., 9/5/95; RK272-00147, Et Al.*

During a review process for the issuance of a supplemental refund to all applicants previously granted refunds in the crude oil proceeding, the Office of Hearings and Appeals (OHA) discovered a group of possible duplicate refunds. The OHA determined that in each case the smaller refund should be rescinded.

However, the OHA did not order a direct repayment of that money. Instead each applicant's supplemental refund will be reduced by the overpayment.

*Texaco Inc./Sun Enterprises, Ltd. and Anglo-American Shipping Co., 9/6/95, RF321-7581; RR321-7582*

The DOE issued a Decision and Order concerning Applications for Refund submitted by Sun Enterprises, Ltd. (Sun) and Anglo-American Shipping Co. (Anglo) in the Texaco Inc. special refund proceeding. Both applicants submitted invoices indicating that they purchased, in the United States, a portion of their petroleum products from London based Texaco, Ltd. The applicants argued that U.S. Texaco Ltd. purchases should not be deemed a "first sale into U.S. commerce," and thus ineligible for a refund, because Texaco Ltd. would have most likely sold U.S. price-controlled petroleum products instead of higher priced "first sale" foreign imported oil. The DOE held that it would presume, in the absence of other information indicating that a purchase was, in fact, a "first sale" purchase, that Sun's and Anglo's purchases in which the product was obtained in the United States would be eligible for a refund in the Texaco proceeding. Consequently, the DOE approved refunds for the applicants.

#### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

*Crude Oil Supplemental Refund Distribution, RB272-25, 09/05/95*

*Crude Oil Supplemental Refund Distribution, RB272-45, 09/06/95*

*Crude Oil Supplemental Refund Distribution, RB272-18, 09/08/95*

*Crude Oil Supplemental Refund Distribution, RB272-50, 09/08/95*

*Texaco Inc./R.W. Dickman Company, Inc., RR321-0116, 09/05/95*

#### Dismissals

The following submissions were dismissed:

Name and Case No.

*Albuquerque Operations Office; VSO-0047*

*Craig Investments, Inc.; RF304-15177*

*Jacob's Fuel Oil Service; RF300-21559*

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